

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GREATER ST. LOUIS CONSTRUCTION)
LABORERS WELFARE FUND, et al.,)

Plaintiffs,)

v.)

A.G. MACK CONTRACTING CO., INC.,)
et al.,)

Defendants.)

No. 4:08-CV-1947 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs' Motion for Contempt against defendant A.G. Mack Contracting Co., Inc. ("Mack"), and Motion for Default Order to Compel an Accounting against defendant A.D.D.A. Environmental, LLC ("A.D.D.A."). For the following reasons, the motion for contempt will be denied as moot and the motion for default order to compel an accounting will be denied without prejudice.

Motion for Contempt

This action was filed on December 16, 2008, and at that time Mack was the only party defendant. Mack was served with summons and complaint and did not file a response within the time to do so. Plaintiffs obtained a Clerk's Entry of Default under Rule 55(a), Federal Rules of Civil Procedure, on February 23, 2009, and a default Order to compel an accounting from Mack on March 5, 2009.

On August 7, 2009, plaintiffs filed an amended complaint which added A.D.D.A. as a party defendant. "It is well-established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect." In re Atlas Van Lines, Inc., 209 F.3d 1064, 1067 (8th Cir. 2000); see In Home Health, Inc. v. Prudential Ins. Co. of America, 101 F.3d 600, 603 (8th

Cir. 1996). As a result, the original complaint no longer performs any function in the case. See 6 Charles Alan Wright, et al., Federal Practice and Procedure § 1746 (2d ed. 2008). Consequently, the entry of default and default order to compel an accounting against defendant Mack must be set aside, and plaintiffs' motion for contempt against Mack based on the original complaint is rendered moot. See Local 513, International Union of Operating Engineers, AFL-CIO v. Weider Excavating, L.L.C., No. 4:09-CV-429 CAS (E.D. Mo. Aug. 21, 2009) (setting aside partial default judgment and denying as moot motion for contempt based upon the filing of an amended complaint).¹

Motion for Default Order to Compel an Accounting

The record indicates that defendant A.D.D.A. was served on August 11, 2009, and its answer or other response to the amended complaint was due on August 31, 2009. On August 24, 2009, plaintiffs prematurely filed a motion for a default order to compel an accounting from A.D.D.A. The motion must be denied without prejudice on the basis that an entry of default from the Clerk of the Court pursuant to Fed. R. Civ. P. 55(a) is a prerequisite to and must precede the grant of a default judgment under Rule 55(b). See Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781,783 (8th Cir. 1998).

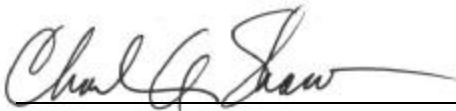
¹See also United States ex rel. SimplexGrinnell, L.P. v. Aegis Ins. Co., 2009 WL 577286, **1-2 (M.D. Pa. Mar. 5, 2009) (clerk's entry of default was set aside and motion for default judgment denied as moot where amended complaint was filed); Rock v. American Exp. Travel Related Servs. Co., Inc., 2008 WL 5382340, *1 (N.D.N.Y. Dec. 17, 2008) (motion for default judgment was moot based on filing of an amended complaint); Best Western Int'l, Inc. v. Melbourne Hotel Investors, LLC, 2007 WL 2990132, at *2 (D. Ariz. Oct. 11, 2007) (denying as moot motions for default judgment due to filing of amended complaint); Saint-Gobain Autover USA, Inc. v. Fuyao Glass Indus. Group Co., Ltd., 2005 WL 3454402, at **1-2 (E.D. Mich. Dec. 16, 2005) (setting aside default partially on the grounds that it had been entered on the original complaint that was rendered void by the filing of the amended complaint); Vanguard Fin. Serv. Corp. v. Johnson, 736 F. Supp. 832, 835 (N.D. Ill. 1990) (striking motion for default judgment as moot upon filing of amended complaint).

Accordingly,

IT IS HEREBY ORDERED that the Clerk's Entry of Default and Order to compel an accounting against defendant A.G. Mack Contracting Co., Inc. are **vacated**. [Docs. 7, 9]

IT IS FURTHER ORDERED that plaintiffs' Motion for Contempt against defendant A.G. Mack Contracting Co., Inc. is **DENIED as moot**. [Doc. 13]

IT IS FURTHER ORDERED that plaintiffs' Motion for Default Order to Compel an Accounting against defendant A.D.D.A. Environmental, LLC is **DENIED without prejudice**. [Doc. 15]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 4th day of September, 2009.